

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADVAIYA SOLUTIONS, INC.,

Plaintiff,

v.

HARTFORD FIRE INSURANCE
COMPANY,

Defendant.

No.: 2:23-cv-00685-KKE

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information, including from non-parties, for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
 3 produced or otherwise exchanged: (1) contractual agreements between Plaintiff and non-
 4 parties, (2) communications regarding this lawsuit between Plaintiff and non-parties, (3)
 5 documents and communications regarding hacking, data mining, and crypto mining of
 6 Plaintiff and non-parties that may include trade secrets and related privacy information, (4)
 7 financial information shared between Plaintiff and non-parties, and (5) confidential and
 8 proprietary corporate documents of Defendant.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential material (as
 11 defined above), but also (1) any information copied or extracted from confidential material;
 12 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
 13 testimony, conversations, or presentations by parties or their counsel that might reveal
 14 confidential material.

15 However, the protections conferred by this agreement do not cover information that is
 16 in the public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is
 19 disclosed or produced by another party or by a non-party in connection with this case only for
 20 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
 21 disclosed only to the categories of persons and under the conditions described in this
 22 agreement. Confidential material must be stored and maintained by a receiving party at a
 23 location and in a secure manner that ensures that access is limited to the persons authorized
 24 under this agreement.

25 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 26 ordered by the court or permitted in writing by the designating party, a receiving party may

1 disclose any confidential material only to:

2 (a) the receiving party's counsel of record in this action, as well as
3 employees of counsel to whom it is reasonably necessary to disclose the information for this
4 litigation;

5 (b) the officers, directors, and employees (including in house counsel) of the
6 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
7 agree that a particular document or material produced is for Attorney's Eyes Only and is so
8 designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for
10 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
11 (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication
14 of confidential material, provided that counsel for the party retaining the copy or imaging
15 service instructs the service not to disclose any confidential material to third parties and to
16 immediately return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
19 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
20 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
21 material must be separately bound by the court reporter and may not be disclosed to anyone
22 except as permitted under this agreement;

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 4.3 Filing Confidential Material. Before filing confidential material or discussing or
26 referencing such material in court filings, the filing party shall confer with the designating

1 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
2 party will remove the confidential designation, whether the document can be redacted, or
3 whether a motion to seal or stipulation and proposed order is warranted. During the meet and
4 confer process, the designating party must identify the basis for sealing the specific
5 confidential information at issue, and the filing party shall include this basis in its motion to
6 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
7 forth the procedures that must be followed and the standards that will be applied when a party
8 seeks permission from the court to file material under seal. A party who seeks to maintain the
9 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
10 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result
11 in the motion to seal being denied, in accordance with the strong presumption of public access
12 to the Court's files.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
15 party or non-party that designates information or items for protection under this agreement
16 must take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. The designating party must designate for protection only those parts of
18 material, documents, items, or oral or written communications that qualify, so that other
19 portions of the material, documents, items, or communications for which protection is not
20 warranted are not swept unjustifiably within the ambit of this agreement.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
22 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
23 unnecessarily encumber or delay the case development process or to impose unnecessary
24 expenses and burdens on other parties) expose the designating party to sanctions.

25 If it comes to a designating party's attention that information or items that it
26 designated for protection do not qualify for protection, the designating party must promptly

1 notify all other parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this
3 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
4 ordered, disclosure or discovery material that qualifies for protection under this agreement
5 must be clearly so designated before or when the material is disclosed or produced.

6 (a) Information in documentary form: (*e.g.*, paper or electronic documents
7 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
9 contains confidential material. If only a portion or portions of the material on a page qualifies
10 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
11 making appropriate markings in the margins).

12 (b) Testimony given in deposition or in other pretrial proceedings: the
13 parties and any participating non-parties must identify on the record, during the deposition or
14 other pretrial proceeding, all protected testimony, without prejudice to their right to so
15 designate other testimony after reviewing the transcript. Any party or non-party may, within
16 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
17 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
18 desires to protect confidential information at trial, the issue should be addressed during the
19 pre-trial conference.

20 (c) Other tangible items: the producing party must affix in a prominent place
21 on the exterior of the container or containers in which the information or item is stored the
22 word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
23 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

24 5.3 Other information. Information not reduced to documentary or tangible form or
25 that cannot be conveniently designated as set forth above may be designated as Confidential
26 material by informing the non-designating party in writing.

1 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the designating
 3 party's right to secure protection under this agreement for such material. Upon timely
 4 correction of a designation, the receiving party must make reasonable efforts to ensure that the
 5 material is treated in accordance with the provisions of this agreement.

6 5.5 Designating Information Disclosed by Another Party. If a party believes that
 7 documents obtained from a third party should be designated as Confidential material, the
 8 parties will promptly meet and confer and, if they do not come to an agreement as to the
 9 treatment of such material, will present the dispute to the Court for resolution. During the
 10 pendency of any such dispute, the material will be treated under the highest designation
 11 proposed.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 14 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 16 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 18 original designation is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 20 regarding confidential designations without court involvement. Any motion regarding
 21 confidential designations or for a protective order must include a certification, in the motion
 22 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 23 conference with other affected parties in an effort to resolve the dispute without court action.
 24 The certification must list the date, manner, and participants to the conference. A good faith
 25 effort to confer requires a face-to-face meeting or a telephone conference.
 26

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures

were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: October 6, 2023

3
4 MILLER NASH LLP

5
6 By /s/ Tristan N. Swanson
7 Tristan N. Swanson, WSBA No. 41934
8 Email: Tristan.swanson@millernash.com

9 Attorneys for Plaintiff

10 DATED: October 6, 2023

11 BULLIVANT HOUSER BAILEY PC

12 By /s/ Matthew J. Sekits
13 Matthew J. Sekits, WSBA #26175
14 E-mail: matthew.sekits@bullivant.com

15 Attorneys for Defendant Hartford Insurance
16 Company

17 4857-4880-4225.1

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that, pursuant to Fed. R. Evid. 502(d), the production of
3 any documents, electronically stored information (ESI) or information, whether inadvertent
4 or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other
5 federal or state proceeding, constitute a waiver by the producing party of any privilege
6 applicable to those documents, including the attorney-client privilege, attorney work-product
7 protection, or any other privilege or protection recognized by law. This Order shall be
8 interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The
9 provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
10 shall serve to limit a party's right to conduct a review of documents, ESI or information
11 (including metadata) for relevance, responsiveness and/or segregation of privileged and/or
12 protected information before production. Information produced in discovery that is protected
13 as privileged or work product shall be immediately returned to the producing party.

14
15 DATED: October 6th, 2023

16
17 

18 _____
19 Kimberly K. Evanson
20 United States District Judge
21
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Western District of Washington on
 [date] in the case of *Advaiya Solutions, Inc. v. Hartford Fire Insurance Company* (case no.
 2:23-CV-00685-RAJ). I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply
 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
 that I will not disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the provisions of
 this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____